91-393

NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

L. MICHAEL MAJESKE
PETITIONER

VERSUS

BOARD OF TRUSTEES FOR
REGIONAL COMMUNITY COLLEGES
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Did the District Court err in entering judgement on the ground of statute of limitations?

2) Did the District Court err by assuming applicability of the doctrine of res judicata?

3) Did the Appeals Court err in affirming the District Court ruling of December 14, 1990?
Is constitutionality involved?

LIST OF ALL PARTIES TO THIS PROCEEDING

L. Michael Majeske
Plaintiff/Petitioner

Board of Trustees for Regional Community Colleges
Defendant/Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

L. MICHAEL MAJESKE, PETITIONER

V.

BOARD OF TRUSTEES FOR REGIONAL COMMUNITY COLLEGES RESPONDENT

PETITION FOR WRIT OF CERTIORARI SECOND DISTRICT COURT APPEALS

The petitioner, L. Michael Majeske, respectfully prays that a writ of certiorari issue to review the judgement of the Second District Court of Appeals entered on May 15, 1991.

OPINIONS BELOW

"...judgement be and hereby is affirmed for substantially the reasons set forth in Judge Cabranes' endorsement..." (Second Circuit Court of Appeals, May 15, 1991)

"...cause of action accrued on June 5, 1985...filed this action against defendant over four years later, on August 31,1989." (judge Cabranes, December 14, 1990)

Accordingly, it would be barred by the doctrine of res judicata."
(Judge Cabranes, December 14, 1990)

JURISDICTION

Rule 10, .1 (a) "When a United States Court of Appeals has...so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court..."

Date of entry of a lower court judgement: December 14, 1990.

Date of entry of appeals court judgement: May 15, 1991.

This action is brought under the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 623 (a) and 29 U.S.C. Section 630 (b), and the Age Discrimination Claims Assistance Act of 1988. Jurisdiction in the United States Courts to hear this matter is granted by U.S.C. Section 626 (c) which also grants to the plaintiff a right to a trial by jury of any issue of fact in this action for recovery of amounts owing as a result of violation of this act, regardless of whether equitable relief is sought by the plaintiff.

CONSTITUTIONAL PROVISIONS

Federal Age Discrimination in Employment Act (AEDA) and the Age Discrimination Claims Assistance Act of 1988 (Claims Act), Public Law 100-283, 102 Stat.78.

The injured party has a right to hearing by jury. The plaintiff may not be forever barred from the Courts in pursuing grievances related to continuing age Discrimination.

CONCISE STATEMENT OF THE CASE

On April 8, 1987, the plaintiff, through an attorney, David E. Kamins, filed a complaint dated March 7, 1987 in the Connecticut District Court (H87-270-AHN), naming as defendants the Board of Trustees, Greater Hartford Community College, Conrad Mallett and Arthur Banks. The plaintiff was and is employed by the Board of Trustees at G.H.C.C. Because of the incompetence and negligence of Attorney Kamins the case was dismissed for lack of prosecution. Kamins was subsequently disbarred from the practice of law in Connecticut.

The plaintiff filed a MOTION TO REOPEN AND TO AMEND THE COMPLAINT on May 31, 1988, which was denied and lost appeal.

Discrimination against the plaintiff continued, and the plaintiff filed a second action, this time naming only the Board of Trustees as defendant and showing new cause of action resulting from the annual Discrimination by the defendant against the plaintiff by failure to promote the plaintiff while promoting younger, less experienced, and even incompetent persons (H-89-491-JAC).

This second case also was decided for the defendant and was erroneously upheld in the appeals court (91-7060).

Concise answers to the questions on page i of this writ are as follows:

ARGUMENT I: THE DISTRICT COURT ERRED IN ENTERING JUDGEMENT ON THE GROUND OF THE STATUTE OF LIMITATIONS.

In its endorsement ruling dated December 14, 1991, the Court stated that the "Plaintiff's cause of action "accrued" on June 5, 1985 when the alleged discriminatory action occurred." This is false for the following reasons: (a) The court cited some vague incidents from a previous case which has no relation with the present case. (b) The respondent discriminates continually on an annual basis and the latest example of his discrimination occurred on or about May 1, 1989, at which time the respondent discriminated by failing to promote the petitioner for the following year, although the petitioner was more than fully qualified and deserving of the promotion to become effective in the following academic year. The refusal of the District Court to hear the second case constitutes dismissal with prejudice of the first case. The injured party is the oldest, most experienced person in the college and has properly applied for promotion in accordance with procedures specified in the working contract between the Board of Trustees and the Union, year after year. Not only has the respondent failed to promote the petitioner, but he has promoted young, incompetent persons far beyond their capabilities, with resultant harm to the students, the State, and the Nation as well as to the petitioner.

Previous cases show that any doubt should be resolved for the plaintiff as in Schroeder v. Daytona-Hudson Corp "...age discrimination case...not barred..." and in DeMalherbe v. International Union of Elevator Constructors, "...Court should apply the longer as a matter of policy...", and in Awbrey v. Great Atlantic and Pacific Tea Co., Inc., "United States has an interest in a limitation period that is sufficiently generous to preserve this remedial spirit of federal civil rights action."

The answer to question number one on page i of this writ is therefore an unqualified, "YES".

ARGUMENT II: THE DISTRICT COURT ERRED BY ASSUMING APPLICABILITY OF THE DOCTRINE OF RES JUDICATA.

The earlier case, Majeske v. Board of Trustees, Greater Hartford Community College, Conrad Mallett and Arthur Banks, was never tried but rather was dismissed for reason of failure to prosecute. The reason for failure to prosecute was the incompetence of the lawyers representing the plaintiff. They are David E. Kamins and M. Daniel Friedland, both whom were subsequently disbarred from the practice of law in Connecticut.

The Court cannot hold the petitioner responsible for the failings of the attorneys when the Court sanctioned them to practice law in its own courtrooms. Neither can the Court thereby forever ban the petitioner from seeking redress of his grievances on any subsequent charge against the respondent who continues to practice unlawful discrimination against the petitioner year after year.

Even though the earlier case was never adjudicated on its merit, and hence cannot satisfy the definition of "RES JUDICATA", the second case does not deserve the same banishment from the Courts because the second case is based upon a second violation of the discrimination statutes and is unrelated to the first, although similar.

Many cases cite the necessity of judgement on merit in order to apply res judicata, for example, Hurt v. Pullman,

"...only if all four elements are present...", Kemp v. Birmingham News, "...must have been a previous final judgement on the merits...", and Trujillo v. State of Colorado, "...employment discrimination suit...did not constitute an adjudication on the merits...".

The answer to the question number two on page i of this writ is therefore an unqualified, "YES".

ARGUMENT III (a): THE APPEALS COURT DID ERR IN AFFIRMING THE DISTRICT COURT RULING OF DECEMBER 14, 1990.

The American public is well aware of the increasing heavy burdens being placed upon every segment of the Court system in this country, both civil and criminal, in addition to bankruptcy, probate, etc. Ours is a litigious society, unmatched anywhere else in the world for sheer volume of number of cases. It is not surprising therefore to find that on occasion a case is not given all the consideration and reflection it may seem to merit.

The labor contract between the plaintiff and the defendant clearly specifies that in case of discrimination such as this one, the only recourse for the grievant is a Federal or State Court of Law. No hearing has ever been granted to the plaintiff in the decades-long continual discrimination against the plaintiff. It appears as though the Courts do not favor whistleblowers.

ARGUMENT III (b): CONSTITUTIONALITY IS INVOLVED IN THIS CASE because the plaintiff is being unlawfully denied access to the Courts for the redress of his

grievance. The plaintiff would like to have a jury trial to which he is entitled, but has not yet been afforded a hearing even before a solitary judge.

For these reasons and for the reasons set forth on the previous pages, the answers to both parts of question number three on page i of this writ are an unqualified "YES".

AMPLIFYING ARGUMENTS:

In August, 1969, the plaintiff was hired by the defendant as an Instructor of Mathematics, with the clear understanding that he would be promoted to at least Assistant Professor after his first year of service. The defendant failed to promote the plaintiff until 1977 and has failed to promote the plaintiff since that time.

The plaintiff is the oldest, most experienced person in the college and has properly applied for promotion in accordance with the procedures specified in the working contract between the Board of Trustees and the Union, the Congress of Connecticut Community Colleges, year after year. Not only has the defendant failed to properly promote the plaintiff but he has promoted young, incompetent persons far beyond their capabilities with resultant harm to the students, the State and the Nation as well as the plaintiff.

The defendant has no means whatever to assure that competency of any of his employees exists or is maintained. In spite of standards for promotion spelled out in the working agreement between the defendant and the union, promotions are based upon politics and favoritism, rather

than on ability or merit. No other person in the entire state-wide community college system has been discriminated against as has the plaintiff.

The plaintiff was unfairly treated by both the Commission on Human Rights and Opportunity and by the Equal Employment Opportunity Commission (Appendix A, B) who both stated that no evidence existed when in fact overwhelming evidence did exist.

The above evidence was summarized in an eighteen page report titled, "DEVIATION AND DISCRIMINATION", which was submitted to Judge Alan Nevas. That report contained tables and charts showing conclusively by means of statistics that the plaintiff was indeed discriminated against by the defendant/respondent. The raw data for the report was obtained from the defendant's own official files, for which use the plaintiff was charged a considerable sum of money. A nine page supplement to that report, presented to Judge Jose Cabranes, contained additional data and substantiated the amount claimed.

Both the District Court and the Appeals Court ignored the overwhelming evidence contained in the report and its supplement but focused their attention improperly on irrelevant material pertaining to a prior unrelated but similar case.

No explanation (except a single memorandum) has ever been offered by the respondent to the petitioner's inquiries as to why he has been discriminated against for two decades. That memorandum, written by the petitioner's immediate superior and distributed to various

administrators, was false and slanderous in that it claimed that the petitioner is a poor-quality teacher. The petitioner is prepared to prove to any Federal jury the falseness of that accusation. For the respondent to use that accusation to justify its past discrimination is tantamount to condemning an innocent person to a lifetime of shame and poverty without a trial or a hearing of any type.

Irreparable harm is being done to the students, the state, and the nation because of discrimination against an able competent teacher such as the plaintiff, while young incompetent persons are promoted beyond their capabilities.

The damages sought by the petitioner are detailed in the petitioner's writ to Judge Cabranes, dated December 9, 1989.

The plaintiff will supply proof of all the above in his brief upon the grant of this petition.

CONCLUSION:

For the foregoing reasons the plaintiff prays that the judgement of the United States Supreme Court be to grant the plaintiff's petition for a Writ of Certiorari, and to thereby permit the plaintiff his right to a judicial or jury hearing to which he has heretofore been improperly denied.

RESPECTFULLY SUBMITTED,

L. Michael Majeske
Plaintiff/Petitioner PRO SE
263 Grindlebrook Road
S. Glastonbury, CT 06073
(203) 633-0827
August 15, 1991

APPENDIX A: (Editorial from the Hartford Courant)

Kid Gloves for CHRO

The governor's four-member task force investigating the state Commission on Human Rights and Opportunities could miss the opportunity to reform the errant civil-rights agency.

The task force's watering down of a hard-hitting report drafted by its chairman and staff indicates a lack of interest in truth and improvement.

For example, the panel apparently didn't like a finding that CHRO's standard of evidence was unclear and probably led to the improper dismissal of legimate complaints. This finding was changed to say only that the standard was "unclear and should be defined." But the rewriters refused to recommend a clear definition even though it would be helpful to state officials with the power to reform CHRO.

The task force also eliminated a preliminary conclusion that the production quotas imposed by CHRO's managers have pressured investigators into closing or dismissing discrimination cases prematurely.

Why the reluctance to tell it like it is?

Testimony gathered in public hearings, the draft report that task force chairman Rudolf P. Arnold helped mold, and an investigation in May by The Courant have left little doubt that the civil-rights agency has become a production-oriented bureaucracy. The other members of

the task force are Julia M. McNamara, president of Albertus Magnus College in New Haven, the Rev. Robert W. Perry, pastor of Union Baptist Church in Stanford, and Hartford lawyer Abner W. Sibal.

CHRO's sorry record during the past five years includes granting hearings only to about 1 percent of complaints, taking six months to begin an investigation and 500 days to close the average case.

The civil-rights agency has lost sight of its mission, which is to protect Connecticut citizens from discrimination based on race, sex, religion, age and disability.

A task-force report that beats around the bush will only create the suspicion that it is trying to cover up CHRO's faults.

APPENDIX B: (News item from the Hartford Courant)

Bias Claims Handling Hit

Washington - The Equal Employment Opportunity Commission did not fully investigate up to 82 percent of job discrimination claims over a three-month period last year, the General Accounting Office reported Tuesday.

Rep. Augustus Hawkins, D-Calif., who ordered the GAO study as chairman of the House Education and Labor Committee, said, "I find it outrageous that there are people across the country who may have a legimate job discrimination claim denied because the EEOC mishandled the case, didn't enforce the law or was more concerned with reducing paper work than with protecting claimant's civil rights.

The GAO reviewed investigations of cases closed between January through March 1987 in which no evidence of discrimination was found. The GAO said 41 percent to 82 percent of the charges closed by six EEOC district offices and 40 percent to 87 percent of charges closed by five state agencies were not fully investigated.

APPENDIX C: ENDORSEMENT RULING

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LEONARD MICHAEL MAJESKE

v. CIVIL NO. H-89-491 (JAC)

BOARD OF TRUSTEES FOR
REGIONAL COMMUNITY COLLEGES

ENDORSEMENT RULING

Plaintiff in this section alleges that defendant discriminated against him by failing to promote him to full professor in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 623(a) and 29 U.S.C. 630(b) ("ADEA"). Defendant moves the court for a summary judgement on the ground that plaintiff's complaint is barred by the applicable statute of limitations.

It appears that this action is substantially identical to one dismissed in 1987 by Judge Alan H. Nevas. See Leonard Majeske v. Board of Trustees, Greater Hartford Community College, et al., Docket No. H-87-270 (AHN) (D. Conn. July 14, 1987). Accordingly, it would be barred by the doctrine of res judicata. Assuming for the argument only that the action is not barred by the doctrine of res judicata, it is clear that judgement must enter for the defendant because the action would nevertheless be barred by the applicable statute of limitations.

The ADEA does not contain its own statute of limitations. Rather, 29 U.S.C. § 626(e) (1) provides that U.S.C. § 255 shall apply to ADEA actions. And § 255 provides in pertinent part that

> [a] action . . . to enforce any cause of action . . . may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within years after the cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued.

The "filling limitations period [] commence[s]" at the time the "alleged discrimination occur[s]." Delaware State College v. Ricks, 449 U.S. 250, 258 (1980). The period ends when the plaintiff "commences" the action. 29 U.S.C. § 255. In an individual action such as this, commencement of an action is deemed to occur when the plaintiff files the complaint. 29 U.S.C. § 256(a).

Plaintiff's cause of action "accrued" on June 5, 1985, when the alleged discriminatory action occurred. Plaintiff filed this action against defendant over four years later, on August 31, 1989. Although there were some administrative efforts to settle the dispute between those two dates, such administrative proceedings do not affect the running of the statutory period. See Unexcelled Chemical Corp. v. United States, 345 U.S. 59, 65-66 (1953). Thus, even assuming for the argument that the cause of the action arose out of a "willful violation," the applicable statute of limitations had clearly run before plaintiff filed his complaint.

There is no evidence to justify the application of the doctrines of equitable tolling or equitable estoppel. See Cerbone v. International Ladies' Garment Workers' Union, 768 F.2d 45, 48-50 (2d Cir. 1985) (Newman, J.). Plaintiff was clearly aware of the accrual of his cause of action and of the applicable limitations period for filing. Indeed, he had been notified by letter from the Equal Employment Opportunity Commission dated October 27, 1986 that a private suit must be filed within two years of the alleged discriminatory action or within three years in the case of a willful violation - that is, within two or three years, respectively, of the date the action "accrued" (June 5, 1988). See Defendants' Memorandum in Support of Motion for Summary Judgement (filed November 20, 1990) at Exhibit C. Moreover, there is no evidence to suggest that defendant at any time caused plaintiff to delay bringing this lawsuit.

CONCLUSION

For the various reasons noted above, defendant's motion is GRANTED and judgement shall enter for defendant.

It is so ordered.

Dated at New Haven, Connecticut, this 14th day of December 1990.

Jose A. Cabranes
United States District Judge

APPENDIX D: MOTION FOR RECONSIDERATION

UNITED STATES COURT OF APPEALS
for the
Second Circuit

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the tenth day of June, One thousand nine hundred and ninety-one.

MAJESKE

v.

BOARD OF TRUSTEES

A motion having been made herein by the appellant pro se, L. Michael Majeske, for reconsideration.

Upon consideration by the panel that decided the appeal, it is Ordered that said motion be and it hereby is DENIED.

For the Court

Elaine B. Goldsmith, Clerk

APPENDIX E: MANDATE

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United states Courthouse in the City of New York, on the 15th day of May, one thousand nine hundred and ninety-one.

PRESENT:

HONORABLE GEORGE C. PRATT,

HONORABLE ROGER J. MINER,

HONORABLE FRANK X. ALTIMARI,
Circuit Judges

LEONARD MICHAEL MAJESKE,
Plaintiff-Appellant,

- against - Docket No. 91-7060

BOARD OF TRUSTEES FOR REGIONAL COMMUNITY COLLEGES,
Defendant-Appellee

This appeal from a judgement of the United States district Court for the District of Connecticut, Jose A. Cabranes, Judge, came on to be heard on the transcript of record and was submitted.

ON CONSIDERATION WHEREOF, it is now ordered that the judgement be and hereby is affirmed for substantially the reasons set forth in Judge Cabranes' endorsement ruling of December 14, 1990.

George C. Pratt, U.S.C.J.

Roger J. Miner, U.S.C.J.

Frank X. Altimari, U.S.C.J.

Issued as MANDATE: June 18, 1991

(2)

91-393

No. _____

In The

Supreme Court Of The United States

October Term, 1991

L. MICHAEL MAJESKE
Petitioner

v.

BOARD OF TRUSTEES FOR
REGIONAL COMMUNITY COLLEGES
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

Cases **Page(s)**

Statutes

Federal Rules of Civil Procedure

Local Rules of Civil Procedure

No. _____

In The

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Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF
In Opposition To Petition For A Writ of Certiorari

STATEMENT OF THE CASE

A. Nature and Course Of The Proceedings

On August 31, 1989, the petitioner filed this action against his employer, the Board of Trustees For Regional Community Colleges under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623(a) and 29 U.S.C. § 630(b) and the Age Discrimination Claims Assistance Act of 1988.

The petitioner is currently an assistant professor at Greater Hartford Community College ("GHCC"). He was hired as an instructor in 1969 and has been an assistant professor since 1974.

The petitioner alleged that he had been denied promotion in 1985 on the basis of performance evaluations which were purportedly biased against him in order to justify non-selection for promotion to professor.

The plaintiff sought monetary damages, retroactive promotion, back pay and adjustments for his retirement. On November 19, 1990, respondent filed a Motion for Summary Judgment.

By Endorsement Ruling filed on December 14, 1990, the District Court (Cabranes, J.) granted the respondent's motion.

On January 10, 1991, petitioner filed Notice of Appeal dated January 8, 1991 to the United States Court of Appeals for the Second Circuit. By summary order on May 15, 1991, the Court of Appeals affirmed the District Court's ruling.

The petitioner filed a Motion for Reconsideration dated May 30, 1991, which the Court of Appeals denied on June 10, 1991.

B. Statement Of Relevant Facts

The defendant board moved for summary judgment on the basis of the following undisputed facts. No counterstatement of facts was ever submitted by petitioner. Therefore, under Rule 9 of the Local Rules of Civil Procedure, the facts were deemed admitted by the petitioner.[1] The undisputed

[1] Rule 9(c)1 of the Local Rules of Civil Procedure provides: "All material facts set forth in said statement will be deemed admitted unless controverted by the statement required to be served by the opposing party in accordance with Rule 9(c)2."

facts were before the District Court and the Court of Appeals on the defendant's Motion for Summary Judgment which was granted below.[2]

The petitioner, Leonard Michael Majeske, is a member of the Instructional Faculty at GHCC, which is a regional community college administered by the defendant Board of Trustees for Regional Community Colleges ("the defendant board"). Statement of Undisputed Facts ("Statement"), par. 1. (App. at 1A).[3]

The faculty ranks for instructional faculty at GHCC are instructor, assistant professor, associate professor and professor. Statement, par. 2. (App. at 1A.)

The petitioner filed Complaint Number 8640141 dated October 16, 1985 with the State of Connecticut Commission on Human Rights and Opportunities ("the CHRO"). The complaint alleged that the defendant board denied him a promotion at GHCC to professor on or about June 3, 1985. Statement, par. 3. (App. at 1A.)

On April 10, 1986, the CHRO notified the petitioner by letter that his complaint had been dismissed for lack of evidence. Statement, par. 4. (App. at 1A.)

On October 9, 1986, the CHRO notified the petitioner by letter that his complaint had been reconsidered at his request and that the original findings and dismissal had been confirmed. Statement, par. 5. (App. at 2A.)

On October 27, 1986, the Equal Employment Opportunity Commission ("the EEOC") notified the petitioner by letter that it had received from the CHRO and filed a copy of

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[2] The defendant-appellee's (respondent's) statement of undisputed facts are found at pages 38-41 of the defendant-appellee's appendix before the Court of Appeals, which is printed herein as Appendix (A).

[3] All references are to pages in the respondent's Appendix to this brief.

the complaint. The letter also indicated that EEOC planned no action concerning the petitioner's charge under the federal Age Discrimination In Employment Act ("ADEA") 29 U.S.C. § 621 *et seq.*, but that the receipt and filing of his charge by the EEOC preserved his private suit rights. In addition, the petitioner was notified that in order to file a private suit, he must do so within two years of the date of the alleged discriminatory action or within three years in case of a willful violation. Statement, par. 6. (App. at 2A.)

On April 8, 1987, the petitioner filed a complaint dated March 17, 1987 in the District Court and named as defendants, the board, GHCC, Conrad Mallett, current GHCC president, and former GHCC president Arthur Banks. The action was brought under the ADEA and alleged that the petitioner had been denied a promotion to the position of professor. Statement, par. 7 (App. at 2A.) The District Court dismissed the action by order dated July 13, 1987 and filed on July 14, 1987, pursuant to Rule 41(b), Federal Rules of Civil Procedure. The petitioner filed a Motion to Reopen and To Amend Complaint on May 31, 1988 in the United States District Court. The named defendants were Andrew McKirdy, Executive Director of the defendant board, and Sidney Lipshires, President Congress of Connecticut Community Colleges, the petitioner's collective bargaining representative.

The motion was denied in an *Endorsement Ruling* by the Court dated June 21, 1988 and filed on June 22, 1988.

Thereafter, the petitioner filed an appeal against the defendant board on August 31, 1989.

The District Court granted the motion and entered judgment for the defendant board on the statute of limitations and *res judicata* grounds.

The Court of Appeals affirmed the District Court's ruling on May 15, 1991.

The petitioner filed a Motion for Reconsideration dated

May 30, 1991 and the Court of Appeals denied the motion on June 10, 1991.

ARGUMENT

I. THE DECISION OF THE COURT OF APPEALS NEITHER CONFLICTS WITH DECISION OF OTHER FEDERAL APPELLATE COURTS NOR DEPARTS SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS SO AS TO WARRANT THIS COURT'S EXERCISE OF ITS SUPERVISORY POWERS

As demonstrated below, the issues relating to the statute of limitations and *res judicata* have been thoroughly addressed by the courts. There is no important dispute about their application. The petitioner has not alleged any conflict among the Federal appellate courts concerning the matters raised in his petition for certiorari.

Finally, petitioner has failed to suggest any factual basis for the proposition that the Court of Appeals for the Second Circuit either departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by the District Court. Petitioner's bald assertion that a case is not given, in the petitioner's estimation, all the consideration and reflection it merits is hardly a sufficient rationale for granting a petition for a writ of certiorari. In any event, as the respondent will show below, all issues raised by the petitioner were disposed of by the Court of Appeals on the basis of established precedent, obviating the need for the court's review of any issues raised by the petitioner.

II. THE COURT OF APPEALS PROPERLY AFFIRMED SUMMARY JUDGMENT IN RESPONDENT'S FAVOR ON THE GROUND OF THE STATUTE OF LIMITATIONS

The ADEA does not contain its own statute of limitations; rather, 29 U.S.C. § 626(e)(1) provides that 29 U.S.C. § 255 shall apply to ADEA actions. In turn, § 255 provides in pertinent part:

> Any action . . . to enforce any cause of action . . .
>
> (a) . . . may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced with two years after the cause of action occurred except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued.

29 U. S. C. 255 (1982).

The period runs from the time the employer takes the allegedly discriminatory action and communicates it to the employee. *See Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980). The period ends when the employee "commences" his action. 29 U.S.C. § 255. If the employee brings an individual action, as in the instant case, commencement occurred when the employee files his complaint. 29 U.S.C. § 256(a). In the case at bar, the statute of limitations began to run on the date that the alleged discriminatory action occurred, June 5, 1985. Petitioner filed his complaint in this cause of action on August 31, 1989, more than four years later.

Petitioner claims that the District Court erred when, in the course of its ruling, it failed to find that the statute of limitations does not apply to ongoing or continuous violations.

In order to show that there is a continuing violation, the petitioner must establish that several incidents of discrimination against petitioner constitute "'a series of related acts' or that defendant's actions were taken pursuant to 'the maintenance of a discriminatory system both before and during the [limitation] period.'" *LaBeach v. Nestle Co., Inc.* 658

F.Supp. 676, 686 (S.D.N.Y. 1987) (quoting *Valentino v. United States Postal Serv.*, 674 F.2d 56, 65 (D.C. Cir. 1982).

When a petitioner claims that acts of discrimination constitute a series of related acts, "it must be clear that the acts complained of are not completed, distinct occurrences." *Yokum v. St. Johnsbury Trucking Co.*, 595 F.Supp. 1532, 1534 (D. Conn. 1984). Discrete violations of different character and time do not necessarily fit into a pattern of continuing violation and "[m]ere continuity of employment without more, is insufficient to prolong the life of a cause of action for employment discrimination." *Delaware State College v. Ricks, supra*, at 257.

In the instant case, the alleged denial of a promotion to the petitioner was unquestionably a discrete and complete act. The acts complained of by the petitioner were completed, distinct occurrences.

With regard to the issue of the maintenance of a discriminatory system, petitioner has not provided any facts to satisfy his burden of showing that the respondent adopted any continuous policy of discrimination; rather his allegations of a continuing course of conduct are all conclusory. In order to establish that respondent engaged in a continuing violation, petitioner must produce competent evidence of a "continuous practice and policy of discrimination." *Miller v. International Tel. and Tel. Corp.*, 755 F.2d 20, 25 (2d Cir.) (citations omitted), cert. denied, 474 U.S. 851 (1985).

The continuing policy theory has been applied where an on-going system is found. *See Guardians Ass'n. v. Civil Serv. Comm'n*, 633 F.2d 232 (2d Cir. 1980) (refusals to hire based on discriminatory test). In cases such as *Guardians*, the violations are pervasive and continue to the time the action was brought as the defendant employer continues to utilize the results of discriminatory process as a basis of personnel decisions over a period of time. *See Guardians, supra* at 249. Once the continuing violation ceases or once employees are no longer subject to the discriminatory policy or actions, the fil-

ing limitations period commences. *EEOC v. Home Ins.*, 553 F.Supp. at 704, 713 (1982).

In contrast, the petitioner, in this action, is complaining of the employer's decision of non-promotion.

Instead of viewing the denial of promotions as completed occurrences which trigger the running of the limitations period, the petitioner characterizes the denial of promotions as a continuing policy of discrimination.

Decisions not to promote are separate occurrences of discrimination, and the filing limitations period begins to run when the decisions are made and communicated to petitioners. *Delaware State College v. Ricks, supra* 498; *Chardon v. Fernandez*, 454 U.S. 6 (1981); *Pfister v. Allied Corp.*, 539 F.Supp. 224 (S.D.N.Y. 1982). In the case at bar, the petitioner has not shown that he was not aware of the respondent's board's June, 1985 decision, nor has he shown that this decision was not communicated to him.[4]

Standing alone, the evidence of individual and discrete incidents of discrimination is inadequate to support a claim that there has been a pattern and practice of discrimination. *See Haskell v. Kaman Corp.*, 743 F.2d 113, 121 (2d Cir. 1984); *Ste. Marie v. Eastern R.R. Ass'n.*, 650 F.2d 395, 405 (2d Cir. 1981).

From the undisputed facts set forth above, it is clear that the petitioner's cause of action occurred in June, 1985, and this action was filed on August 31, 1989, well after the expiration of any limitation period contained in 29 U.S.C. § 255.

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[4] There can be no dispute that by October, 1985, the petitioner was aware of the non-promotion decision because the CHRO complaint alleging discrimination in his non-promotion is dated October 16, 1985. Statement, par. 3. (App. at 1A.)

III. THE COURT OF APPEALS PROPERLY AFFIRMED SUMMARY JUDGMENT IN RESPONDENT'S FAVOR ON THE GROUNDS THAT PETITIONER'S COMPLAINT IS BARRED BY THE DOCTRINE OF *RES JUDICATA*

Petitioner claims that the Court of Appeals erred in affirming the District Court, when in the course of its ruling, it found this action to be substantially identical to one dismissed in 1987 by Judge Nevas and that accordingly, it would be barred by the doctrine of *res judicata*.

In the *Order* issued by Judge Nevas, the case was dismissed pursuant to Rule 41(b), Fed. R. Civ.P., which provides in pertinent part:

> **(b) Involuntary Dismissal: Effect Thereof** . . . Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Judge Nevas dismissed the prior action for failure to prosecute. Respondent does not cite language which specifies that the order for dismissal does not operate as an adjudication upon the merits, nor should it because the dismissal was for failure to prosecute and not for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19. Therefore, Judge Nevas' order of dismissal operates as an adjudication upon the merits by virtue of Rule 41(b).

The petitioner's only claim in opposition to the application of the doctrine of *res judicata* is that *res judicata* should not apply because the court did not rule on the merits of his earlier suit. However, Rule 41(b) Fed. R. Civ. P. makes it clear that *res judicata* applies to dismissals for failure to prosecute with due diligence. *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37 (1982).

IV. THE COURT OF APPEALS' AFFIRMANCE OF SUMMARY JUDGMENT RULING DOES NOT VIOLATE PETITIONER'S SEVENTH AMENDMENT RIGHT TO A JURY TRIAL.

It is textbook law that Seventh Amendment rights are not infringed by the grant of a motion for summary judgment, since, in such circumstances, the jury as trier of fact has no role. *Barrett v. Independent Order of Foresters*, 625 F.2d 73 (1980), *Shore v. Parklane Hosiery Co., Inc.*, 565 F.2d 815 (1977), cert. granted, 435 U.S. 1006, aff'd 439 U.S. 322 (1979); *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (1978) cert. denied, 433 U.S. 934 (1978); *Davis v. U. S. Government*, 742 F.2d 171 (1984).

For all of the reasons described above, summary judgment was properly entered upon well established precedents of this Court. The plaintiff has not demonstrated any conflict between the circuits on any material issue of law nor has he raised any issue which needs an original decision or revisitation by the Court.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for writ of certiorari.

FOR THE RESPONDENT,
BOARD OF TRUSTEES FOR
REGIONAL COMMUNITY COLLEGES

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No. _____

In The

Supreme Court Of The United States

October Term, 1991

L. MICHAEL MAJESKE

Petitioner

v.

BOARD OF TRUSTEES FOR
REGIONAL COMMUNITY COLLEGES

Respondent

APPENDIX TO BRIEF OF RESPONDENT

TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LEONARD MICHAEL MAJESKE *Plaintiff*	CIVIL ACTION NO. H-89-491 (JAC)
v.	
BOARD OF TRUSTEES FOR REGIONAL COMMUNITY COLLEGES *Defendant*	NOVEMBER 19, 1990

STATEMENT OF UNDISPUTED FACTS NOT IN DISPUTE

Pursuant to Local Rule 9(c) the defendant submits the following statement of material facts as to which the defendants contend there is no genuine issue to be tried.

1. The plaintiff, Leonard Michael Majeske is a member of the Instructional Faculty at Greater Hartford Community College, which is a regional community college administered by the Board of Trustees for Regional Community Colleges.

2. The faculty ranks for Instructional Faculty at Greater Hartford Community College are Instructor, Assistant Professor, Associate Professor and Professor.

3. The plaintiff filed Complaint Number 8640141 dated October 16, 1985 with the State of Connecticut Commission on Human Rights and Opportunities. The Complaint alleged that the State of Connecticut Board of Trustees for Regional Community Colleges at Greater Hartford Community Colleges denied him a promotion to professor on or about June 3, 1985.

4. On April 10, 1986, the State of Connecticut Commission on Human Rights and Opportunities notified the plaintiff by letter that Complaint Number 8640141 dated October 16, 1985 had been closed.

5. On October 9, 1986, the State of Connecticut Commission on Human Rights and Opportunities notified the plaintiff by letter that Complaint Number 864014 had been reconsidered at his request and that the original findings and closure recommendations had been confirmed. Complaint Number 8640141 had been dismissed for lack of sufficient evidence.

6. On October 27, 1986, the Equal Employment Opportunity Commission notified the plaintiff by letter that it had received and filed a copy of Complaint Number 8640141 dated October 16, 1985 and filed with the Connecticut Commission on Human Rights and Opportunities. The letter also indicated that EEOC planned no action concerning plaintiff's charge under the federal Age Discrimination In Employment Act. The plaintiff was further informed that the receipt and filing of his charge by the EEOC preserved his private suit rights. In addition, plaintiff was notified that in order to file a private suit, he must do so within two years of the date of the alleged discriminatory action or within three years in case of a willful violation.

7. On April 8, 1987, the plaintiff filed a complaint dated March 17, 1987 in the United States District Court and named as defendants, the Board of Trustees, Greater Hartford Community College, Conrad Mallett and Arthur Banks. The action was brought under the Age Discrimination In Employment Act of 1967 and alleged that the plaintiff had been denied a promotion to the position of professor.

8. The plaintiff's cause of action filed in United States District Court on April 8, 1987 was dismissed by the Court by order dated July 13, 1987 and filed July 14, 1987, pursuant to Rule 41(b), Federal Rules of Civil Procedure.

9. The plaintiff filed a Motion to Reopen and To Amend Complaint on May 31, 1988 in the United States District Court. The named defendants were Andrew McKirdy, Executive Director Board of Trustees of Regional Community col-

leges and Sidney Lipshires, President Congress of Connecticut Community Colleges.

10. The plaintiff's Motion to Reopen and To Amend Complaint filed May 31, 1988 was denied in an *Endorsement Ruling* by the Court dated June 21, 1988 and filed on June 22, 1988.

11. The plaintiff filed this present action against the defendant, Board of Trustees for Regional Community Colleges on August 31, 1989.

BOARD OF TRUSTEES FOR
REGIONAL COMMUNITY COLLEGES

BY: CLARINE NARDI RIDDLE
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(3)

NUMBER 91-393

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

L. MICHAEL MAJESKE
PETITIONER

VERSUS

BOARD OF TRUSTEES FOR
REGIONAL COMMUNITY COLLEGES
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

The petitioner has been pursuing with "DUE DILIGENCE" a just promotion for more than two decades. Due to the vindictiveness of former President Arthur Banks of Greater Hartford Community College the petitioner has illegally been denied such promotion. The respondent-defendant Board of Trustees for Regional Community Colleges has endorsed Banks' illegal actions and continues to do so even though Banks has been retired for 5 years. It continues to deny the petitioner his just promotions. It is to the advantage of the Board of Trustees to continue their cover-up of its past improper actions.

To date no fair and open hearing of the petitioner's grievance has yet been held and not a single issue has been decided in a Court of Law based on its merits. The respondent appears intent that he will do all in his power to prevent an open hearing in order to prevent the light of day from disclosing the respondent's culpability in unlawfully discriminating against the petitioner, as well as his malpractice in administering a public service.

The respondent's brief to the Supreme Court attempts to defend his position. This present reply by the petitioner is necessitated by the need for the Court to be fully informed on all aspects of this case and accordingly the respondent's writ is answered below:

STATEMENT OF RELEVANT FACTS

Respondent's brief cites two and one half pages of relevant facts to which the petitioner agrees. The Court must also be made aware of other relevant facts which have direct bearing on this case.

1) The petitioner was hired by the college (Greater Hartford Community) in August, 1969 with the clear understanding that he would be promoted to at least Assistant Professor at the end of one year's service. Dean Beckley, the hirer, said later that it was the decision of President Arthur Banks to not promote and there was nothing that Beckley could do about it.

2) The petitioner had previous teaching experience at Catholic University of America in Washington, D.C. and at the University of Detroit, as well as part time teaching experience, plus a dozen years experience as a consulting engineer in industry. There are very few teachers in the Connecticut Community College system who have had prior experience teaching at two major universities. The petitioner gave up a high-paying career to do what he loved - teaching.

3) Dean Beckley agreed that the petitioner had well served his time as an instructor. Banks however, refused to recommend the petitioner for promotion until 1977 for his own spiteful reasons and the petitioner has not been promoted since that time. In the meantime, younger, less capable and even incompetent persons have received regular promotions.

4) Banks is a highly egotistical man and he despised intelligence in his subordinates. The petitioner is not ashamed of his intelligence but is rather proud to admit that he has been a member of MENSA for many years and a contributor to its publications. Banks was more of a dictator than a president and more of a politician than an academician. He could not accept reasonable arguments but overwhelmed his opponents by his sheer size and weight.

5) Banks was somewhat aloof. The petitioner had not met Banks until several months after being hired when the first faculty meeting was held. Banks walked into the meeting smoking cigar and commanded attention. In those early days smoking was permitted in faculty meetings. The petitioner was somewhat active in the American Lung Association at that

time and was a strong advocate of no smoking in the school. He and Banks frequently clashed on the smoking issue and as a consequence was not promoted until 1977 and has not been promoted since.

6) Banks frequently boasted that he was not interested in teaching students how to earn a living, but that he was interested in teaching them how to use politics for their immediate gains. He gave only lip service to his publicized dream of "quality education".

7) Banks unfairly denied the petitioner an earned semester's sabbatical leave with pay in 1981. Yet Banks granted himself a full year's sabbatical leave with pay on his retirement and improperly thereby increased his large pension by an additional $6,000 per year with the acquiescence of the respondent. He also improperly had the school library named after himself although it is doubtful if he even visited the library more than twice.

8) In the Connecticut Community College system there is no provision for testing the continuing competency of teachers as there is in the elementary and secondary school systems. Promotion committee members are chosen by popular vote and do not necessarily represent the older segments of the faculties. The petitioner is by far the oldest person in the employ of the college yet the most under-ranked and the most under-paid.

9) For many years the petitioner has kept a sign on his office door informing the world that "Algebra is spoken here" and welcomes any and all visitors at all times. He has taught all the mathematics presently given at his college and is instantly prepared to answer any question on a problem relating to those subjects. He has written computer programs and used them in class for illustration purposes for about ten years while other teachers are only now beginning to do so. He is the only member of the mathematics department to have presented a paper on mathematics before a national audience of experts. His numerous contributions to the college and his service to his community of South Glastonbury, CT well qualify him for full professorship.

10) Considerable evidence exists that the respondent has committed serious disservice to individuals, the communities,

and the state while at the same time discriminating against the petitioner (the appendices included herein listed as Appendix I through Appendix IV illustrate this).

11) For many years the petitioner has campaigned vigorously for competency testing for the teachers in the Connecticut Community College system. Both the administration and the union oppose such needed reform. The Community colleges are a state-funded extension of the elementary and secondary school systems, which long have had periodic testing of its teachers under state statutes. Much of the blame for the poor quality of this nation's graduates must be placed on poor teaching (see Appendix V), both in the lower grades and in the colleges. The petitioner is the oldest, most capable mathematician in his department yet the most unappreciated.

ARGUMENT

I. THERE IS NO PRECEDENT IN AMERICAN JURISPRUDENCE APPLICABLE TO RES JUDICATA WHEREIN A LITIGANT'S ATTORNEY, DURING THE INTERVALS OF COURT ACTIONS, FAILED IN HIS DUTIES, FAILED TO MAINTAIN PROPER RECORDS, AND FAILED TO COMMUNICATE WITH HIS CLIENT AND SUBSEQUENTLY WAS DISBARRED FOR MALPRACTICE.

The petitioner cannot be held liable for failings of his counsel when said counsel was authorized to practice law in service to the general public by the Courts. Since this case has not been heard before, in any Court, it constitutes an original action and as such, Rule 17 as well as certiorari applies in the present case. The present case therefore must be heard in the Supreme Court under Rule 17 or must be remanded to a lower Court for a hearing.

It is unfair and improper of the respondent to imply that the petitioner has failed to exercise "due diligence" in his pursuit of justice stemming from the discriminatory actions of the respondent and the incompetence of a duly authorized attorney.

The respondent's brief fails to address this particular issue and therefore it must be presumed that he is in agreement.

II. NEITHER THE DISTRICT COURT NOR THE APPEALS COURT PROPERLY AFFIRMED SUMMARY JUDGMENT ON THE GROUND OF THE STATUTE OF LIMITATIONS.

The respondent admits that "In the instant case, the alleged denial of a promotion to the petitioner was unquestionably a discrete and complete act. The acts complained of by the petitioner were complete, distinct occurrences." Indeed, the said denials of promotion were discrete acts, repeated every year and constituted a continuing policy originate by President Banks and continued by the respondent after Banks' retirement. Any one of said acts is sufficient to prove the petitioner's claim of discrimination and

hence the respondent cannot assert that a statute of limitations on some act five years ago negates some action of the present time when the overt act occurred only in the past spring.

The damage done to the petitioner, to the students at Greater Hartford Community College, to the taxpayers of Connecticut and to the nation as a whole must be examined by this Court openly or before a fair and impartial jury in a lower court.

III. THE COURT OF APPEALS' AFFIRMANCE OF THE SUMMARY JUDGMENT UNQUESTIONABLY VIOLATES THE PETITIONER'S RIGHT TO A JURY TRIAL.

The Appeals Court failed to give the petitioner's writs the proper consideration due them. Considerable evidence exists which shows that cases similar to the present are subjected to "increasingly conservative judges who are bored by, if not downright hostile to, such cases." The quotation is taken directly from a front page article in the New York Times, July 24, 1991. (See Appendix VI).

The petitioner has been slandered and defamed by employees of the respondent who refuses to recognize his responsibility. In addition the respondent has willfully violated Federal statutes by repeated acts of discrimination against the petitioner. The petitioner is 70 years old and approaching retirement, while the respondent has effectively condemned him to a future lifetime of shame and poverty, without so much as a single fair and open hearing.

The above is equivalent to sentencing a person on false charges without even permitting him a single open trial to which he is unquestionably entitled by the CONSTITUTION. The cases cited by the respondent are completely irrelevant to the present case and by no stretch of one's imagination can they be made relevant.

Due to the repeated discriminatory acts of the respondent against the petitioner, the petitioner is presently deprived of at least $20,000 per year income to which he is entitled and must bear the ignominious title of Assistant

Professor, while incompetent persons more than 20 years his junior have been Full Professors for many years.

For all the reasons described above, this Court should grant the petitioner his request for a fair hearing or a writ of certiorari.

CONCLUSION

For the foregoing reasons, and for the reasons explained in the PETITION FOR WRIT OF CERTIORARI, the plaintiff-petitioner prays that the judgment of the United States Supreme Court be to grant the writ of certiorari and to thereby permit the plaintiff his right to a judicial or jury hearing to which he has heretofore been improperly denied.

RESPECTFULLY SUBMITTED,

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September 30, 1991

APPENDIX TO PETITIONER'S REPLY BRIEF

APPENDIX I

Article from the Hartford Courant, May 29, 1991

COLLEGE SYSTEM BUNGLES HANDLING OF FULBRIGHT SCHOLAR

Maybe they could draw in all that vast expertise at the Hartford State Technical College for a simple tightening-up chore. In the matter of the handling of Professor Don D. Wilson, someone's got a few screws loose.

Actually, considering the mess the system is making of this respected scholar and the great honor he has brought to the state's technical college galaxy, it might simply be too big a job even for the specialists.

Wilson is Hartford State's first-ever, its only ever, Fulbright scholar, in fact it is believed he is the only person in the state's two-year, community and technical college system to be so recognized. Fulbright scholars are selected for the richness of their accomplishments and promise. Tip your hat to him.

...Here's a guy, 60 years old, who's plugged away at this college for more than a decade and who wins one of the most prestigious recognitions his world has to offer. It's a once-in-a-lifetime kind of thing, and its been muddied up over a few dollars. How many? The system says $9,000. Wilson figures that they could shift things around for the semester at a cost of only $2,800. There is even a calculation that shows they could save money by his being gone..."

APPENDIX II

Editorial from the Hartford Courant by Burton Levine

A COLLEGE GIVES A MERIT AWARD DESPITE AN ETHICS VIOLATION

"...I had noticed that some department heads had hired their spouses for some of this part-time work. Such nepotism is discouraged by many schools and organizations. The state's ethics code bans it unless the department chairman receives a waiver from a supervisor.

Concerned that those of us without a spouse might not be getting a fair hearing in the hiring process, I questioned the State Ethics Commission about the practice. Perhaps others did as well, because this past January two department heads were fined $300 by the ethics commission for hiring their spouses.

Then this June, only four months after the decision, the State Board of Trustees for Regional Community-Technical Colleges gave a $1,500 merit award to one of the two fined department heads...

Is it any wonder that after seeing this bureaucratic legerdemain people outside the government wonder whether their money is being wasted?"

APPENDIX III

Article from the Hartford Courant, Sept. 6, 1991
by Katherine Parisih, Courant staff writer

IN LEAN TIMES, COLLEGES GIVE OUT MERIT BONUSES

"When the bookkeepers finished tallying the budget for the state's community and technical colleges last fiscal year, officials found about $37,000 left over.

If they didn't spend the balance, they knew the money would revert in the state's general fund.

So the Board of Trustees voted in May to distribute the surplus in merit bonuses, for "noteworthy service" to 20 management employees. The bonuses which averaged $1,879, were awarded at a time when many college employees - including faculty members - received notices that they would be laid off because the system's budget for the 1991-92 fiscal year called for the elimination of 188 positions.

Some of the layoffs, including all those of faculty members, have since been rescinded, said Mary Anne Cox. a spokeswoman for the college system.

...State legislators were stunned Thursday to learn that bonuses were paid in a year of fiscal crisis, when the 1990-91 general fund deficit was $966 million.

...Marc Herzog, deputy director. A merit increase of $2,492 raised his salary to $85,556. One time bonus: $3,422.

...Jackson W. Foley, Jr., director of employee relations. A merit increase of $2,453 raised his salary to $84,210. One time bonus: $3,368,

...Gail Dunnrowicz, associate dean at Manchester Community College. Her merit increase of $1,300 raised her salary to $63,551. One-time bonus of $1,312."...

APPENDIX IV

Editorial from the Hartford Courant, Sept. 11, 1991

SHAMELESS ADMINISTRATORS AT THESE COLLEGES

Have the administrators of Connecticut's community colleges and technical colleges no sense of discretion? In this year of fiscal misery, the managers at these colleges decided it would be all right to take $37,000 left over in their budget from the previous year and spend it on bonuses.

The bonuses averaged $1,879 each, but not to teachers - only to administrators, some of whom received cost-of-living and merit raises as well.

...Many sacrifices were made in the community and technical colleges this year, though none that we know of by the people who run them. For example, Don D. Wilson, a professor at Hartford State Technical College was unable to accept a Fulbright Scholarship because the system supposedly had no money. The Board of Trustees denied him full pay for a leave of absence...

...If there is any honor among the administrators who fattened their paychecks, they will take at least a portion of their dubious windfalls and pay Professor Wilson's way to Yugoslavia. Which one of the plutocrats wants to make the call to the Fulbright people?

APPENDIX V

Article from the Hartford Courant, Sept. 16, 1991

TEACHERS ARE TO BLAME FOR POOR MATH AND SCIENCE SKILLS, STUDY FINDS

Associated Press - Washington - If students are dummies at science and math, don't blame the kids, a panel of scientists and educators says. Odds are, their teachers aren't qualified.

More than two thirds of elementary school science teachers lack adequate preparation in science and more than 80 percent of math instructors are deficient in mathematics, according to a report issued by the Carnegie Commission on Science, Technology and Government.

...The commission reached its conclusions on teacher preparation by reviewing material previously compiled by the Federal Coordinating Council for Science, Engineering and Technology.

...Although education is mostly a state and local responsibility, Branscomb said, the Federal government should "play a leading, rather than a cheerleading role" in improving science and math education...

...Under the commission's plan, the National Science Foundation would improve universities' education of math and science teachers...

APPENDIX VI

Article from the New York Times, July 24, 1991
by Steven A. Holmes

WORKERS FIND IT TOUGH GOING FILING LAWSUITS OVER JOB BIAS

...As the nation wrestles intellectually and politically with the issue of civil rights, the legal system appears to be growing increasingly inhospitable toward individual race and sex discrimination cases. Lawyers more and more are turning away such cases, say experts in employment law and lawyers representing plaintiffs and employers.

They say the cases are time-consuming, difficult to win and bring far less money than other civil litigation like personal-injury suits, which permit punitive damages.

Lawyers themselves say, moreover, that they face increasingly conservative judges who are bored by, if not downright hostile to, such cases.

While much of the evidence is anecdotal, a survey conducted in May by the National Employment Lawyers Association, a group made up of about 1,000 lawyers for plaintiffs, found that 44 percent of its members rejected more than 90 percent of the job-discrimination cases that have been brought to them...

...Most often, experts say, those who seek to bring such cases simply abandon the thought of getting any redress in the Federal Courts.

"What happens is that they end up not being able to enforce their rights," said Lex Larson, president of Employment Law Research, a North Carolina concern that publishes manuals on labor law. They go out and find another job, and forget the whole thing."...

..."You don't have the big easy class-action cases you had in the 1970's and 1980's, where you could get a big dollar settlement and attorney's fees over relatively simple issues," said Lawrence Z. Lorber, a Washington lawyer who represents large corporations. "Now, there are testing cases where you

need experts and a lot of up-front money. It's an arena where the targets are fewer, the issues more complex and the litigation takes longer, because the courts are jammed."